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Filing date: **09/19/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Latin Brands Corp.		
Entity	Corporation	Citizenship	Puerto Rico
Address	9 Claudia Street Amelia Industrial Park Guaynabo, PR 00968 UNITED STATES		

Correspondence information	Samuel F. Pamas Attorney HOGLUND & PAMIAS, P.S.C. 256 Eleanor Roosevelt Street San Juan, PR 00918 UNITED STATES samuel@hhoglund.com, aileen@hhoglund.com, aixa@hhoglund.com, nahomy@hhoglund.com Phone:787-772-9834
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Registration Subject to Cancellation

Registration No	3553239	Registration date	12/30/2008
Registrant	All Market Inc 39 West 14th St. Suite 404 New York, NY 10011 UNITED STATES		

Goods/Services Subject to Cancellation


Class 032. First Use: 2004/05/31 First Use In Commerce: 2004/08/28 All goods and services in the class are cancelled, namely: coconut water-based beverages
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Petitioner as Basis for Cancellation


U.S. Registration No.	777114	Application Date	06/11/1963
Registration Date	09/15/1964	Foreign Priority Date	NONE
Word Mark	VITARROZ		

Design Mark	
Description of Mark	NONE
Goods/Services	Class U046 (International Class 029). First use: First Use: 1956/06/06 First Use In Commerce: 1956/09/17 Canned Beets, Canned, Baked, Green, Kidney, Lima, Pink, Pinto, Snap, Wax and White Beans; Canned Carrots, Corn, Chick Peas, Field Peas, and Sweet Peas; Dried Beans and Rice; and Edible Oil

U.S. Registration No.	1934639	Application Date	10/06/1993
Registration Date	11/14/1995	Foreign Priority Date	NONE
Word Mark	VITARROZ		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1979/09/00 First Use In Commerce: 1979/09/00 canned fish Class 030. First use: First Use: 1975/09/00 First Use In Commerce: 1975/09/00 crackers Class 032. First use: First Use: 1989/01/00 First Use In Commerce: 1989/01/00 non-alcoholic brewed beverages, namely malt beverages		

U.S. Registration No.	1959772	Application Date	08/22/1994
Registration Date	03/05/1996	Foreign Priority Date	NONE
Word Mark	VITARROZ		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 pasta and spaghetti sauce		

U.S. Registration No.	3984872	Application Date	10/22/2010
Registration Date	06/28/2011	Foreign Priority Date	NONE
Word Mark	VITARROZ		

Design Mark	
Description of Mark	The mark consists of an oval shape with a thick outline. The oval has a darker backdrop with a lighter hue at the center that darkens progressively toward the edges. Within the oval appears the word "VITARROZ" in a stylized design such that the letters toward the middle of the word are larger than the letters toward the edge of the word.
Goods/Services	<p>Class 029. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Edible fats and oils; olive oil and vegetable oil; processed olives; vegetables and other horticultural comestible products; assorted chips, namely, plantain, yucca and vegetable chips</p> <p>Class 030. First use: First Use: 1956/06/06 First Use In Commerce: 1956/09/17 Rice and processed grains; coffee; wafers and cookies; condiments, namely, preserved garden herbs as seasonings, vegetable concentrates used for seasoning, cinnamon sticks; adobo; capers; minced garlic; processed garlic for use as seasoning; cinnamon; seasonings; spices; and spice blends</p> <p>Class 032. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Coconut-based beverages, namely, coconut milk</p> <p>Class 033. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Wine</p>

Attachments	<p>72170786#TMSN.gif (1 page)(bytes)</p> <p>85159434#TMSN.jpeg (1 page)(bytes)</p> <p>Cancelation _Vita Coco_FINAL2.pdf (16 pages)(239995 bytes)</p> <p>EX. 1 Reg Vitarroz 0777114.pdf (1 page)(22161 bytes)</p> <p>EX. 2 Reg Vitarroz 1934639.pdf (1 page)(24353 bytes)</p> <p>EX. 3 REG VITARROZ 1979552.pdf (2 pages)(40053 bytes)</p> <p>EX. 4 REG VITARROZ 3984872.pdf (1 page)(995235 bytes)</p> <p>EX. 5 REG VITA COCO.pdf (1 page)(22270 bytes)</p>
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Samuel F. Pamias/
Name	Samuel F. Pamias
Date	09/19/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No.: 3553239
For the Mark : VITA COCO
Registered on : December 28, 2008

Latin Brands Corp.

Petitioner

v.

All Market, Inc.

Defendant

Cancellation No.:

PETITION FOR CANCELLATION

Petitioner, Latin Brands Corp. (hereinafter Latin Brands), a corporation duly organized under the laws of the Commonwealth of Puerto Rico, having a principal place of business at #9 Claudia Street, Amelia Industrial Park, Guaynabo, Puerto Rico, 00968, believes that it is and will continue to be damaged by U.S. Registration No. 3553239 for “**VITA COCO**” and hereby petitions to cancel said registration as follows:

STATEMENT OF FACTS

1. Latin Brands is the lawful owner of the following U.S. Trademark Registrations in the United States Patent and Trademark Office for the distinctive trademark “**VITARROZ**,” all of which are valid and in full force and effect:

- a. **U.S. Trademark Registration No. 0777114** for “Canned Beets, Canned, Baked, Green, Kidney, Lima, Pink, Pinto, Snap, Wax and White Beans;

Canned Carrots, Corn, Chick Peas, Field Peas, and Sweet Peas; Dried Beans and Rice; and Edible Oil,” under International Class 29.

- b. **U.S. Trademark Registration No. 1934639** for “canned fish” under International Class 29; “crackers,” under International Class 30; and “**non-alcoholic brewed beverages, namely malt beverages,**” under International Class 32.
- c. **U.S. Trademark Registration No. 1959772** for “pasta and spaghetti sauce,” under International Class 30.
- d. **U.S. Trademark Registration No. 3984872** for “Edible fats and oils; olive oil and vegetable oil; processed olives; vegetables and other horticultural comestible products; assorted chips, namely, plantain, yucca and vegetable chips,” under in International Class 29; “Rice and processed grains; coffee; wafers and cookies; condiments, namely, preserved garden herbs as seasonings, vegetable concentrates used for seasoning, cinnamon sticks; adobo; capers; minced garlic; processed garlic for use as seasoning; cinnamon; seasonings; spices; and spice blends,” under in International Class 30; “**Coconut-based beverages, namely, coconut milk,**” under in International Class 32; and “Wine” under International Classes 33. EXHIBITS 1-4

2. In addition to these registrations, Latin Brands Corp. owns significant common law rights in its **VITARROZ** mark.

3. On the other hand, upon information and belief, All Market, Inc. (hereinafter All Market) is a corporation organized under the laws of Delaware and located at 39 West 14th Street, Suite 404, New York, New York, 10011.

4. All Market registered the trademark “**VITA COCO**”, Registration Number 3553239, under International Class 32 for “coconut water-based beverages.” According to the Vita Coco trademark was registered on December 30, 2008, and has been used in U.S. commerce since August 28, 2004. This Registration covers identical and/or related goods as Latin Brands’ Registration Nos. 1934639 and 3984872, particularly non-alcoholic and coconut-based beverages. EXHIBIT 5

5. In turn, Latin Brands Corp. has used the **VITARROZ** mark in connection with its **VITARROZ** products since long before All Market began using or applied to register the **VITA COCO** mark. Specifically, the “**VITARROZ**” trademark has been used in the United States commerce since, at least, the year 1956. This date manifestly predates All Market's; therefore, as a registered and senior user of the mark, Latin Brands has a superior and exclusive right to use the mark. EXHIBITS 1-5.

6. Throughout the years millions of units of the **VITARROZ** products have been sold; this is evidence that the **VITARROZ** Trademark has had great acceptance among consumers.

7. In addition, the **VITARROZ** trademark has been, and is, extensively advertised in and promoted in the United States. The Petitioner’s marks are symbolic of extensive goodwill and consumer recognition built up throughout the years, as a result of substantial amounts of time, money, efforts and resources that have been invested and continue to be invested in the advertisement, promotion and marketing of goods using the **VITARROZ** trademark. Therefore, the Petitioner’s marks are strong and have become distinctive and famous among its customers.

8. Moreover, the “**VITARROZ**” trademark has been used to identify a several products, identified in paragraph 1, above. As such, the **VITARROZ** trademark is a House Mark for this line of products.

9. Registration No. 3553239 for “**VITA COCO**” should be cancelled on the grounds of likelihood of confusion, false designation of origin and dilution.

10. The “**VITA COCO**” mark creates a likelihood of confusion with Latin Brands’ “**VITARROZ**” trademark, as there are clear similarities between the two marks and the products identified by them. Thus, consumer confusion between the “**VITA COCO**” and the “**VITARROZ**” trademarks is likely, due to the fact that any inadvertent consumer can be confused as to the source of the goods in question when used on potentially competing products.

11. All Market’s registered mark “**VITA COCO**” is confusingly similar to Latin Brands’ marks in appearance, pronunciation and trade connotation, particularly because the dominant portion of both marks is the prefix “**VITA**” and they both identify coconut based beverages. Therefore, All Market’s mark “**VITA COCO**” is likely to cause confusion, deception and mistake with Latin Brands’ “**VITARROZ**” trademarks, all to Latin Brands’ damage.

12. In light of the foregoing, unless the registration owned by All Market is cancelled, Latin Brands will be damaged; thus, Latin Brands is entitled to petition a cancellation. Accordingly, the registration owned by All Market should be cancelled pursuant to Section 2(a) and Section 2(d) of the Lanham Act, 15 U.S.C. §10529(a) and (d). Alfred Electronics v. Alford Mfg. Co., 333 F.2d 912 (1964), Missouri Silver Pages Directory v. Southwestern Bell Media, 6 U.S.P.Q.2d 1028 (1988).

GROUND FOR CANCELLATION

13. The first statutory ground for presenting this petition for cancellation is section 14 of the Trademark Act, 15 U.S.C. §1064, which provides in relevant part:

A petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed as follows by any person who believes that he is or will be damaged, including as a result of dilution under section 43(c), by the registration of a mark on the principal register established by the Act, or under the Act of March 3, 1881, or the Act of February 20, 1905.” (Emphasis provided)

14. The grounds on which an opposing party can petition to cancel a registration of a mark are stated in Section 43(a) of the Lanham Act, § 43 (15 U.S.C. §1125). Section 43 (a) provides that:

False designations of origin; false description or representation provides a remedy for persons who might be affected by:

(a) (1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which--

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person. (Emphasis provided)

OWNERSHIP

15. It is well established that a federal registration is “prima facie evidence of the validity of the registered mark, of the registration of the mark, of the registrant’s ownership of the mark and of the registrant’s exclusive right to use the registered mark...,” 15 U.S.C. §1057(b) (Emphasis provided).

16. Essentially, Section 7 of the Lanham Act, 15 USCA §1057 (b) establishes a statutory presumption of ownership and validity in favor of the registrant of a mark:

“A certificate registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registered mark and on the registration of the mark, of the registrant’s exclusive right to use the registered mark in commerce of in connection with goods or services specified in the certificate subject to any conditions or limitations in the certificate”.

PRIORITY RIGHTS OVER THE MARK

17. To establish priority, the petitioner must show proprietary rights in the mark that produce a likelihood of confusion. *Herbko Int. v. Kappa Books*, 308 F.3d 1156, 1172 64 U.S.P.Q. 2d 1375 (Fed. Cir. 2002) (quoting *Otto Roth & Co. v. Universal Foods Corps.*, 640 F.2d 1317, 1320, 209 U.S.P.Q. 40, 43 (C.C.P.A. 1981).

18. These proprietary rights may arise from a prior registration, prior trademark or service mark use, prior use as a trade name, prior use analogous to trademark or service mark use, or any other use sufficient to establish proprietary rights. *Id.*; see, e.g. *Nat’l Cable Television*, 937 F.2d at 1582 (canceling mark on petitioner’s prior use of trade name). “Thus, even prior use by opposer of the term as a trade name ... or use in advertising analogous to trademark use, may be sufficient to preclude registration of that term to a subsequent user.” *Knickerbucker Toy Co. v. Faultless Starch Co.*, 59 C.C.P.A. 1300, 467 F.2d 501, 508-09, 175 U.S.P.Q. 417, 422 (C.C.P.A. 1972) (citing *Malcolm Nicol & Co. v. Witco Corp.*, 881 F.2d 1063, 1065 (Fed. Cir. 1989).

19. Moreover, the “**VITARROZ**” mark has been in used in the United States commerce since at least, 1956 and has been registered since the year 1964. On the other hand, All Market has just recently started using the mark “**VITA COCO**” (2004). EXHIBITS 1-5.

20. In light of the foregoing, it has been established that Latin Brands is the senior user of the “**VITARROZ**” mark and that it has the exclusive right to use this mark. Therefore, Latin Brands has established priority rights over the “**VITARROZ**” trademark.

LIKELIHOOD OF CONFUSION

21. Likelihood of confusion as to the source of goods is the basic test for a trademark infringement. Restatement Third, Unfair Competition §20, comment d (1995); *McLean v. Fleming*, 96 U.S. 245, 24 L Ed. 828 (1878). According to the Lanham Act § 32, 15 U.S.C.A. § 1114(1). A likelihood of confusion exists if the use of the other mark “is likely to cause confusion, or to cause mistake, or to deceive.” the consumer into believing that the opposer, like in this case, is the origin or the source of the goods or services in question. Also, in evaluating a likelihood of confusion, both marks should be analyzed as a whole. Restatement, Torts § 729 (1938). *Henri’s Food Products Co., Inc., v. Tasty Snacks, Inc.*, 817 F.2d 1303, 2 U.S.P.Q.2d 1856 (7th Cir. 1987).

22. In order to determine whether likelihood of confusion exists between two conflicting marks, the Trademark Trial and Appeal Board (T.T.A.B.) examines the subject trademarks in the light of the factors¹ established in *In re E. I. DuPont DeNemours & Co.*, 476 F.2d. 1357, 1361, 177 U.S.P.Q. 653, 567 (CCPA 1973). See *In re Majestic Distilling Co.*, 315 F. 3d 1311, 1315, 65 USPQ 2d 1201, 1204 (Fed. Cir. 2003) (“not all of the

¹(1) The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. (2) The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use. (3) The similarity or dissimilarity of established, likely-to-continue trade channels. (4) The conditions under which and buyers to whom sales are made, i. e. “impulse” vs. careful, sophisticated purchasing. (5) The fame of the prior mark (sales, advertising, length of use). (6) The number and nature of similar marks in use on similar goods. (7) The nature and extent of any actual confusion. (8) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion. (9) The variety of goods on which a mark is or is not used (house mark, “family” mark, product mark). (10) The market interface between applicant and the owner of a prior mark: (a) a mere “consent” to register or use, (b) agreement provisions designed to preclude confusion, i. e. limitations on continued use of the marks by each party, (c) assignment of mark, application, registration and good will of the related business, (d) laches and estoppel attributable to owner of prior mark and indicative of lack of confusion, (11) The extent to which applicant has a right to exclude others from use of its mark on its goods, (12) The extent of potential confusion, i. e., whether *de minimis* or substantial, (13) Any other established fact probative of the effect of use.

DuPont factors made relevant or of equal weight in a given case, and any one of the factors may control a particular case,” quoting *In re Dixie Restaurant, Inc.*, 105 F.3d 1405, 1406-07, 41 USPQ 2d 1531, 1533 (Fed. Cir. 1997).

23. As shown below, when the criteria outlined in DuPont, ante, are applied to the case at hand, a likelihood of confusion exists between the two marks.

DISTINCTIVENESS

24. A mark is considered strong if it is inherently distinctive See TMEP 1209.01. The distinctiveness of a trademark addresses its capacity for identifying and distinguishing particular goods as emanating from one producer or source and not another. Marks that are inherently distinctive are categorized as arbitrary/fanciful or suggestive. See *Id.* Here, Latin Brand’s mark “Vitarroz” is fanciful, coined term; thus, inherently distinctive.

STRENGTH OF THE MARK

25. The strength of a mark is a determination of the mark's distinctiveness and degree of recognition in the marketplace. A mark is strong if it is highly distinctive, i.e., if the public readily accepts it as the hallmark of a particular source; it can become so because it is unique, because it has been the subject of wide and intensive advertisement, or because of a combination of both. The stronger the mark, all else equal, the greater the likelihood of confusion. Gray v. Meijer Inc., 295 F. 3d 641, 646, 63 U.S.P.Q. 2d 1735 (6th Cir. 2002). Homeowners Group, Inc. v. Home Marketing Specialists, 931 F. 2d 1100, 1107 (6th Cir. 1991).

26. “The strength of a mark is often ascertained by looking at the extent of advertising invested on it, and by the volume of sales of the product”. Banfi Products Corp. v. Kendall-Jackson Winery Ltd., 74 F. Supp.2d 188 (E.D.N.Y. 1999).

27. In the case at hand, Latin Brand's "**VITARROZ**" trademark is a strong, well-known name in the Hispanic market, and their products are a staple among consumers of Latin-American food products. As previously stated, Latin Brands has consistently and continuously used its "**VITARROZ**" trademark to sell food products in the United States commerce, including Puerto Rico, since as early as 1956. Throughout the years, millions of units of the "**VITARROZ**" products have been sold; therefore, the "**VITARROZ**" Trademark has had great acceptance among consumers.

28. In addition, the **VITARROZ** trademark has been, and is, extensively advertised in and promoted in the United States. The Petitioner's marks are symbolic of extensive goodwill and consumer recognition built up throughout the years, as a result of substantial amounts of time, money, efforts and resources that have been invested and continue to be invested in the advertisement, promotion and marketing of goods using the **VITARROZ** trademark. Therefore, the Petitioner's marks are strong and have become distinctive and famous among its customers.

29. Accordingly, as a result of the very substantial amounts of money invested and that continue to be invested in the advertising and promotion of the "**VITARROZ**" trademark, sales have become significant and have resulted in the extensive use of the "**VITARROZ**" products Trademark.

30. Thus, the "**VITARROZ**" Trademark has built up a substantial commercial reputation and incalculable associated goodwill that makes this Trademark strong, well-known and famous, giving it an added brand value that belongs exclusively to Latin Brands.

SIMILARITY OF THE MARKS

31. The degree of similarity between the marks is another factor that's weighed in a likelihood of confusion analysis. First, the marks are compared for similarities in appearance, sound, connotation, and commercial impression. In re E. I. DuPont DeNemours & Co., 476 F.2. 1357, 1361, 177 U.S.P.Q. 653, 567 (CCPA 1973). "Each must be considered as it is encountered in the marketplace. Although similarity is measured by the marks as a whole, similarities weigh more heavily than differences". AMF Inc v. Sleekcraft Boats, 599 F.2d 341, 351 (9th Cir. 1979).

32. In the case at hand, it is undisputed that trademarks at issue are similar in appearance, sound, connotation, and commercial impression. Both parties' trademarks use the prefix "**VITA**" in a prominent fashion, making it the main element of the trademarks. The confusing similarity and overall visual appearance of both parties' trademarks is remarkable to the point where Defendant's infringing trademark in effect mimics that of Latin Brands. Needless to say, since both parties' trademarks contain the same word "**VITA**", the marks are inevitably identical in visual appearance, sound and connotation.

33. When the parties' trademarks are compared, we see that in all of them the word "**VITA**" appears at the beginning of the mark. In both cases the word "**VITA**" acts as the primary word for the trademark due to its strong sound in Latin pronunciation.

34. Furthermore, when the meaning of the word "**VITA**" is compared to the way this word is used in "**VITA COCO**", one can quickly notice that Defendant's intent is to use it as a trademark.

35. Similarity in meaning or connotation is another factor to consider when determining whether there is a likelihood of confusion between trademarks. The meaning or connotation of a mark must be determined in relation to the named goods or services. In re Sears, Roebuck and Co., 2 USPQ2d 1312 (TTAB 1987).

36. As noted in the preceding analysis, as used in relation to the respective products, the parties' trademarks have the same connotation and meaning, and bring the same idea to peoples' minds.

37. In light of the foregoing, all these elements clearly contribute to the similarity of the two marks and the overall confusion of the public.

CHANNELS OF TRADE

38. Another DuPont factor in a likelihood of confusion analysis involves channels of trade. Both, Latin Brand's "**VITARROZ**" products and All Market's "**VITA COCO**" products travel through exactly the same channels of trade.

39. Since both parties sell goods of the same type and nature, namely food products, Defendant's goods are and will be distributed, marketed and advertised through the same channels and the same mediums as Latin Brand's "**VITARROZ**" products. Being food and beverage items, the parties' products are or will be sold in places where these types of goods are sold, such as supermarkets, convenience stores, and the like.

40. For this same reason, both All Market's and Latin Brand's goods are offered to the same class of customers; thus, both parties target the same consumer group for their goods.

41. Accordingly, there can be no allegation that the niche market of each good can be differentiated from the other. As a result, likelihood of confusion exists and Latin Brand's proprietary rights as the rightful owner of the "**VITARROZ**" trademark will be severely damaged by the registered use of All Market's trademark, "**VITA COCO**". See In re E. I. DuPont DeNemours & Co., 476 F.2d 1357 (1971), 1361. (Likelihood of confusion is established when the marks exhibit a "similarity or dissimilarity of established, likely-to-continue trade channels.")

TYPE OF GOODS AND DEGREE OF CONSUMER CARE EXPECTED

42. The types of goods and the degree of consumer care expected is another consideration in a likelihood of confusion analysis. In analyzing the degree of care that a consumer might exercise in purchasing the parties' goods, the question is whether a "reasonably prudent consumer" would take the time to distinguish between the two product lines. Brookfield Comm., Inc. v. West Coast Entertainment Corp., 174 F.3d 1036, 1060 (9th Cir.1999).

43. The care that is expected from the purchasers is determined by the marketing environment in which the goods or services are ordinarily bought or sold. Some factors to be considered are the manner in which the goods are purchased, the manner in which the goods are marketed and the class of prospective purchasers. Restatement (THIRD) of Unfair Competition §20. Other factors affecting consumer care include the kind and cost of the product or service. Less care and greater risk of confusion is expected for items, which are inexpensive. Shakey's, Inc. v. Covalt, 204 F.2d 426, 218 U.S.P.Q. 16, 20 (9th Cir. 1983). These are generally not subject to thoughtful research.

44. The consumer who is accustomed to buying an inexpensive, impulse item is unlikely, due to the nature of the purchase, to retain more than a general recollection of the mark or dress and therefore is more likely to be confused when later encountering the same product sold under a confusing similar mark or dress. AmBRIT, Inc. v. Kraft, Inc., 812 F.2d 1531, 1 U.S.P.Q.2d 1161, 1169 (11th Cir. 1986) (sales in busy grocery stores to hurried shoppers"); Lever Bros. Co. v. Am. Bakeries Co., 693 F.2d 251, 259, 216 U.S.P.Q. 177, 183 (2d Cir. 1982) ("casual buyer...[in] the bustling, self-service atmosphere of a typical supermarket"); Floralife, Inc. v. Floraline Int'l, Inc., 225 U.S.P.Q. 683, 686 (T.T.A.B. 1984) (Goya Foods, Inc. v. Condal Distribs., Inc., 732 F. Supp. 453, 457, 17 U.S.P.Q. 2d

1949, 1953 (S.D.N.Y. 1990) (expert testified that consumers, when purchasing low-cost staple food items, “quickly grab the product off the supermarket shelf”).

45. In addition, the same sales methods and marketing channels are employed. Consumers are used to obtaining these products at the supermarket and in a casual atmosphere. Since the products bearing the trademarks in controversy are every day articles, and usually low-cost items, the typical supermarket buyer tends to select quickly their products, without paying a great degree of care.

46. This behavior and lack of sophistication from the consumer adds to the fact that the regular customers who go to the supermarket thinking they will buy “**VITARROZ**” products might erroneously end up purchasing the “**VITA COCO**” products thinking they are made by the Petitioner, Latin American Brands.

SIMILARITY OF THE NATURE OF THE GOODS & THE INTENT IN ADOPTING THE MARK

47. “When the goods produced by the alleged infringer compete for sales with those of the trademark owner, infringement usually will be found if the marks are sufficiently similar that confusion can be expected”. AMF. Inc. v. Sleekcraft Boats, 599 F.2d 341, 348 (9th Cir. 1979).

48. Both parties are involved in the sale of food and/or beverage products; their goods are in direct competition and allude to the similar ethnic group. Therefore, likelihood of confusion is unavoidable.

49. All Market intends to penetrate into the same market as Latin Brands and intends to do so by free-riding and capitalizing off the reputation and goodwill of the “**VITARROZ**” trademark. By using the name “**VITA COCO**” and having it registered as a trademark, All Market is clearly alluding to Latin Brand's “**VITARROZ**” mark.

50. As has been demonstrated, not only are the “**VITARROZ**” products and All Market’s products “Vita Coco” closely related within the same type of industry. Their products not only belong to the same group as one of “**VITARROZ**” most popular products, but they are consumed in the same kind of manner. They are identical and/or closely related and the similitude is inevitable.

51. By the time All Market conceived its mark, Latin Brands had already adopted, used and built a strong and well-known mark in “**VITARROZ**”.

52. The fact that the parties’ marks are similar and the fact that All Market had knowledge of the “**VITARROZ**” mark when it adopted its own, similar mark and intends to profit from it, suggests that this circumstantial inference is the leading basis for a finding of bad faith intent.

CONCLUSION

Being two marks competing in the same industry of food products, distributed through the same channels of trade, and aimed to the same target of consumers, there is a great probability that the common consumer will identify the word “**VITA**” on All Market’s “**VITA COCO**” products and buy them, thinking that they are Latin Brand’s “**VITARROZ**” products or that they are somehow related to, or sponsored by Latin Brands. Accordingly, likelihood of confusion as to the source or quality of the products exist and All Market’s trademark registration should be cancelled.

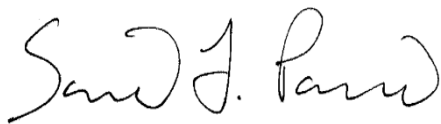
In view of the similarity of the respective marks and the related nature of the goods of the respective parties, All Market’s mark so resembles Latin Brand’s registered mark as to be likely to cause confusion, mistake, or deceit. Moreover, Defendants’ mark and application are also diluting or will dilute the inherent distinctiveness of Latin Brand’s

“**VITARROZ**” mark and the goodwill associated therewith in violation of 15 U.S.C. 11258(c).

WHEREFORE, Latin Brands is being severely damaged by the registration of the mark “**VITA COCO**” and prays that this Cancellation be sustained in its favor, so that said Registration No. 3553239 for “**VITA COCO**” is cancelled.

Respectfully submitted,

September 19, 2011



Samuel F. Pamias-Portalatín
E-mail: samuel@hhoglund.com
Hoglund & Pamias, P.S.C.
256 Eleanor Roosevelt Street
San Juan, Puerto Rico 00918
Telephone: 787-772-9200
Facsimile: 787-772-9533

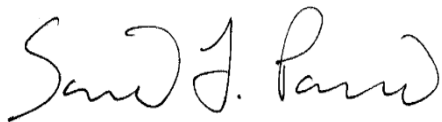
s/Aileen E. Vázquez-Jiménez
Aileen E. Vázquez-Jiménez
E-mail: aileen@hhoglund.com
Hoglund & Pamias, P.S.C.
256 Eleanor Roosevelt Street
San Juan, Puerto Rico 00918
Telephone: 787-772-9234
Facsimile: 787-772-9533

Attorneys for Petitioner

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this date, a true and correct copy of the foregoing Petition for Cancellation was served by first class mail, postage prepaid, upon Defendant, All Market Inc, by mailing it to the correspondence address of record in the United States Patent and Trademark Office, Glenn A. Gundersen, Dechert LLP, 2929 Arch Street, Cira Centre, Philadelphia, Pennsylvania, United States 19104; All Market Inc, 39 West 14th Street, Suite 404, New York, New York, 10011.

September 19, 2011



Samuel F. Pamias-Portalatín
E-mail: samuel@hhoglund.com
Hoglund & Pamias, P.S.C.
256 Eleanor Roosevelt Street
San Juan, Puerto Rico 00918
Telephone: 787-772-9200
Facsimile: 787-772-9533

s/Aileen E. Vázquez-Jiménez
Aileen E. Vázquez-Jiménez
E-mail: aileen@hhoglund.com
Hoglund & Pamias, P.S.C.
256 Eleanor Roosevelt Street
San Juan, Puerto Rico 00918
Telephone: 787-772-9234
Facsimile: 787-772-9533

Attorneys for Petitioner

United States Patent Office

777,114
Registered Sept. 15, 1964

PRINCIPAL REGISTER Trademark

Ser. No. 170,786, filed June 11, 1963



Vitarroz Corp. (New Jersey corporation)
109 Grand St.
Hoboken, N.J.

For: CANNED BEETS, CANNED, BAKED, GREEN, KIDNEY, LIMA, PINK, PINTO, SNAP, WAX AND WHITE BEANS; CANNED CARROTS, CORN, CHICK PEAS, FIELD PEAS, AND SWEET PEAS; DRIED BEANS AND RICE; AND EDIBLE OIL, in CLASS 46.

First use June 6, 1956, on rice; in commerce Sept. 17, 1956.

Owner of Reg. No. 655,313.

Int. Cls.: 29, 30 and 32

Prior U.S. Cls.: 45, 46 and 48

United States Patent and Trademark Office

Reg. No. 1,934,639
Registered Nov. 14, 1995

**TRADEMARK
PRINCIPAL REGISTER**

VITARROZ

INTERNATIONAL FOOD CONCEPTS, INC.
(DELAWARE CORPORATION)
51 PACIFIC AVENUE
JERSEY CITY, NJ 07304

FOR: CANNED FISH, IN CLASS 29 (U.S. CL. 46).

FIRST USE 9-0-1979; IN COMMERCE 9-0-1979.

FOR: CRACKERS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-0-1975; IN COMMERCE 9-0-1975.

FOR: NON-ALCOHOLIC BREWED BEVERAGES, NAMELY MALT BEVERAGES, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 1-0-1989; IN COMMERCE 1-0-1989.

OWNER OF U.S. REG. NOS. 655,313 AND 777,114.

SER. NO. 74-444,385, FILED 10-6-1993.

DARLENE BULLOCK, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,959,772

Registered Mar. 5, 1996

**TRADEMARK
PRINCIPAL REGISTER**

VITARROZ

INTERNATIONAL FOOD CONCEPTS, INC.
(DELAWARE CORPORATION)
51 PACIFIC AVENUE
JERSEY CITY, NJ 07304

THE WORD "VITARROZ" IS COINED
WORD COMPOSED OF THE LATIN WORD
"VITA" FOR LIFE AND THE SPANISH WORD
"ARROZ" MEANING "RICE".

FOR: PASTA AND SPAGHETTI SAUCE, IN
CLASS 30 (U.S. CL. 46).

FIRST USE 0-0-1992; IN COMMERCE
0-0-1992.

OWNER OF U.S. REG. NOS. 655,313 AND
777,114.

SER. NO. 74-563,736, FILED 8-22-1994.

DARLENE BULLOCK, EXAMINING ATTOR-
NEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,959,772

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FOR: PASTA AND SPAGHETTI SAUCE, IN
CLASS 30 (U.S. CL. 46).

FIRST USE 0-0-1992; IN COMMERCE
0-0-1992.

OWNER OF U.S. REG. NOS. 655,313 AND
777,114.

SER. NO. 74-563,736, FILED 8-22-1994.

DARLENE BULLOCK, EXAMINING ATTOR-
NEY

United States of America

United States Patent and Trademark Office



Reg. No. 3,984,872

Registered June 28, 2011

Int. Cls.: 29, 30, 32 and 33

TRADEMARK

PRINCIPAL REGISTER

LATIN BRANDS CORP. (PUERTO RICO CORPORATION)
9 CLAUDIA STREET
AMELIA INDUSTRIAL PARK
GUAYNABO, PUERTO RICO 00968

FOR: EDIBLE FATS AND OILS; OLIVE OIL AND VEGETABLE OIL; PROCESSED OLIVES; VEGETABLES AND OTHER HORTICULTURAL COMESTIBLE PRODUCTS; ASSORTED CHIPS, NAMELY, PLANTAIN, YUCCA AND VEGETABLE CHIPS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 0-0-1992; IN COMMERCE 0-0-1992.

FOR: RICE AND PROCESSED GRAINS; COFFEE; WAFERS AND COOKIES; CONDIMENTS, NAMELY, PRESERVED GARDEN HERBS AS SEASONINGS, VEGETABLE CONCENTRATES USED FOR SEASONING, CINNAMON STICKS; ADOBO; CAPERS; MINCED GARLIC; PROCESSED GARLIC FOR USE AS SEASONING; CINNAMON; SEASONINGS; SPICES; AND SPICE BLENDS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 6-6-1956; IN COMMERCE 9-17-1956.

FOR: COCONUT-BASED BEVERAGES, NAMELY, COCONUT MILK, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 0-0-1992; IN COMMERCE 0-0-1992.

FOR: WINE, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 0-0-1992; IN COMMERCE 0-0-1992.

OWNER OF U.S. REG. NOS. 777,114, 1,934,639, AND 1,959,772.

THE MARK CONSISTS OF AN OVAL SHAPE WITH A THICK OUTLINE. THE OVAL HAS A DARKER BACKDROP WITH A LIGHTER HUE AT THE CENTER THAT DARKENS PROGRESSIVELY TOWARD THE EDGES. WITHIN THE OVAL APPEARS THE WORD "VITARROZ" IN A STYLIZED DESIGN SUCH THAT THE LETTERS TOWARD THE MIDDLE OF THE WORD ARE LARGER THAN THE LETTERS TOWARD THE EDGE OF THE WORD.

SEC. 2(F).

SER. NO. 85-159,434, FILED 10-22-2010.

WON TEAK OH, EXAMINING ATTORNEY



David J. Kyfos

Director of the United States Patent and Trademark Office

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 3,553,239

United States Patent and Trademark Office

Registered Dec. 30, 2008

**TRADEMARK
PRINCIPAL REGISTER**

VITA COCO

ALL MARKET INC (DELAWARE CORPORATION)

39 WEST 14TH ST.

SUITE 404

NEW YORK, NY 10011

FOR: COCONUT WATER-BASED BEVERAGES,
IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 5-31-2004; IN COMMERCE 8-28-2004.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE COCO, APART FROM THE MARK AS SHOWN.

SER. NO. 77-431,332, FILED 3-25-2008.

LEIGH CAROLINE CASE, EXAMINING ATTORNEY